

STATE OF VERMONT  
HUMAN SERVICES BOARD

In re	)	Fair Hearing Nos. 15,426
	)	& 15,455
Appeal of	)	

INTRODUCTION

The petitioner appeals the decisions by the Department of Social Welfare denying her request for the creation of a Community Service Employment (CSE) placement under Reach Up that would place her in an organization in which she has been volunteering since July, 1997. The issue is whether the Reach Up regulations require the Department to make this CSE placement in light of the petitioner's personal circumstances. The parties have submitted this matter to the Board on the basis of a written Stipulation of Facts and legal memoranda.

FINDINGS OF FACT

The parties' Stipulation of Facts is as follows:<sup>1</sup>

1. Since June 1990, claimant has been receiving ANFC benefits on behalf of herself and her two children. Claimant was assigned to WRP Group 3, and had a mandatory job search start date of 6/1/97 and a mandatory work start date of 8/3/97. Her work requirement is 20 hours per week. Since July 1997, claimant has been subject to DSW Reach-up job search requirements; there have been issues in conciliation with regard to applicable job search

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<sup>1</sup>References in the Stipulation to certain pages of the

requirements and the claimant's compliance or noncompliance with them, and claimant has sought to have a Community Service Employment (CSE) position developed with which to meet her ETL work requirements.

2. Claimant emigrated from Russia to Vermont approximately nine years ago. She holds B.S. and M.D. degrees awarded in Moscow in the 1970s and practiced pediatric medicine in Russia at a supervisory level before emigrating. She received an M.Ed. degree from the University of Vermont in 1994. Claimant's children are now 11 and 13 years old. Claimant is not licensed to practice medicine in the United States. Claimant believes that employers invariably consider her too old and overqualified for the entry-level positions to which DET and Reach-up has referred her over a period of more than a year now.

3. Since prior to July 1997, claimant has engaged in unpaid work activities outside the scope of her Family Development Plans, as amended, averaging approximately 110 hours per month, related to Vermonters in International Trade and Services (VITS), a non profit organization she has largely been responsible for developing. Claimant hopes eventually to parlay her volunteer work with VITS into a paid position in the field of international trade.

4. Claimant's unpaid work activities include

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evidentiary record have been omitted.

organizing a monthly educational meeting on an international trade topic, publication of a monthly 3-4 page newsletter, monthly news releases, monthly updating of the organization's web page, media promotion in the form of broadcast and print features, networking through attendance and presentations at meetings and conferences of organizations including the Vermont International Trade and Export Council, World Trade Office, U.S. Small Business Administration, Vermont Agency of Commerce and Community Development, Vermont Department of Agriculture, Vermont Economic Development Authority, U.S. Customs Service, World Trade Office, and various Chambers of Commerce. Claimant handles editorial content and advertising for Vermont International, a quarterly journal promoting international trade within and without Vermont, which claimant began publishing in 1998 with a commitment for \$1000 in start-up funding made available by Champlain College, and which is continuing to support itself through financial sponsorship by government agencies that intend to regularly provide content for the journal.

5. Beginning in July 1997, DSW has notified the claimant that she will be required to accept a "suitable Community Service Placement" or an "Appropriate Community Work Experience position" if she did not find a suitable unsubsidized job.

6. A renewal Reach-up Family Development Plan dated 2/20/98 provided that a Community Service Employment placement would be "developed" for the claimant if she did not become employed after 8 more weeks of Job Service activities.

7. On February 27, 1998, the claimant missed a weekly scheduled meeting to go over job search contacts with her case manager. The claimant left a message for her case manager stating that she missed the meeting because her daughter was sick. The case manager sent the claimant a check for \$33 for a bus pass along with a job referral and day care listings.

8. On March 4, 1998, having already been engaged in Job Search activities for more than six months without success, claimant proposed to her case manager that development of a Community Service Employment placement be undertaken with the objective of converting her work with VITS into a CSE placement. DSW regulations (W.A.M. ' 2346.6A) specifically provide that for Group 3 Reach-up participants, unpaid work activities can be converted into CSE placements.

9. On March 5, 1998, claimant's case manager scheduled a conciliation meeting to take place March 13 due to what she considered claimant's refusal to comply with Reach Up job search activities. The case manager forwarded

claimant's CSE proposal to DSW Operations Assistant Renee Richardson for a ruling on whether DSW would accept claimant's proposal. The case manager notified the claimant of that action.

10. During the month of March 1998, the claimant and her caseworker corresponded regarding Reach-up requirements, the fact that the claimant missed two conciliation appointments, and the issue of DSW's having suspended claimant's bus pass. Claimant had notified her case manager two days ahead of the first conciliation appointment that she would not be able to attend because of the lack of a bus pass. On the date of the conciliation claimant telephoned as well to inform the case manager that she was ill and could not attend. The case manager rescheduled the conciliation for two subsequent dates in March, but the claimant was unable to attend because her illness continued and her children also became ill.

11. The case manager requested a physician's certificate to document the claimant's illness on March 25, 1998.

12. The claimant requested Fair Hearing No. 15,426 on March 27, 1998. The issue in this fair hearing was whether the claimant was entitled to a bus pass.

13. The claimant notified her case manager on March 29, 1998, that as she and her children had not been treated by a

physician (other than the claimant herself), no physician's certificate would be available. In the same letter, claimant requested information about the status of her Community Service proposal. The case manager sent the eligibility specialist and the claimant notice of the imposition of sanctions for failure to attend the conciliation appointments without medical documentation.

14. The claimant requested Fair Hearing No. 15,455 to contest the imposition of sanctions.

15. At the initial convening of the consolidated Fair Hearings on April 15, 1998, the parties agreed that the issue of approval of a CSE was the underlying issue needing resolution, and the claimant agreed to continue to fulfill job search requirements pending a decision.

16. After the April 15 hearing, the case manager sent the claimant a copy of an e-mail that the case manager had received from the central office on March 12, 1998, denying the claimant's proposal for a CSE with VITS. The reason given for the denial were the lack of a "structured work setting and adequate supervision as defined in the work site agreement and policy at 2643.94 P.2, 1 Paragraph 2." The e-mail also stated that "another concern" was the CSE placements last for 10 months at a time, and the claimant's unpaid work for VITS was "longstanding".

17. Claimant's counsel sought explanation of DSW's

position in a letter to the case manager dated April 17, 1998, pointing out the problem that relying upon other VITS participants for "supervision" would require disclosing the claimant's status as a welfare recipient. Claimant fervently believes that to disclose this fact to any of the other participants, who are executives of public agencies and business organizations, would defeat the entire purpose of her enterprise by stigmatizing her to them as a welfare recipient, ending any chance she has of garnering a paid position among them.

18. Issues regarding the obligations of both the claimant and DSW have continued to arise during the subsequent course of the parties' relationship.

19. DSW's counsel responded to the request for information regarding DSW's position on approval of the proposed CSE placement expressing the view that DSW was not ready to even try to develop a CSE placement for the claimant because DSW had again taken the position that the claimant had refused to fulfill her job search requirements.

After receiving the above, and the parties' written legal arguments, the hearing officer held a conference call with the attorneys for the parties on February 9, 1999, at which time the Department indicated that it did not dispute that the petitioner had substantially complied with the agreement of the parties in May, 1998, that she participate

in a Reach Up job search for a period of two months. The Department also did not dispute that in light of the above, and the fact that the petitioner remains unemployed, the next step in the Reach Up process is to develop and place the petitioner in a suitable CSE. The issue in this case is whether the Department is required to place the petitioner in the CSE of her choosing, or whether the Department can proceed to develop another CSE placement of its choosing.

ORDER

The Department's decision is affirmed.

REASONS

In the Department's regulations the "goals" of Reach Up CSE include the following:

Provide for the development or enhancement of participants' work readiness, including developing enhanced work habits and work skills, obtaining current work references, and identifying and removing barriers to employment, thus increasing their ability to obtain and maintain unsubsidized employment.

WAM ' 2346.9.(B)(1)

The petitioner in this matter asserts that the legislative purpose of the ANFC program--i.e., for the Department to "administer the ANFC program in a manner that clearly recognizes defined reciprocal responsibilities and obligations on the part of both parents who receive aid and



services from the program and government"<sup>2</sup>--is violated by the Department's refusal to create a CSE placement out of the petitioner's current volunteer work with VITS.

The petitioner further maintains that such a placement is required because of her belief that "employers invariably consider her too old and overqualified for entry-level positions" in the workforce. Indeed, it is this belief that is at the heart of the petitioner's ongoing disputes with Reach Up--i.e., whether the petitioner is in fact too old and overqualified to be hired for entry level positions, or whether because of her belief that she is, and her preference to work in a field of her expertise and training, she has purposefully avoided finding entry-level employment.

The parties did not submit sufficient evidence to resolve this issue, but based on the facts that were stipulated the petitioner's past cooperation with Reach Up need not be considered in order to dispose of the instant appeal.

It is concluded that the primary emphasis of Reach Up, and the Welfare Reform Project (WRP) in general, is "on parents' responsibility to support themselves and their children materially through their own efforts and on government's responsibility to support parents in achieving a maximum level of self-support." W.A.M. ' 2340.1. In light of this, the petitioner bears a heavy legal burden in

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<sup>2</sup>See W.A.M. ' 2340.1.

this matter. She must show that the Department's refusal to create a CSE placement for her at VITS is contrary to this goal.

Unfortunately, the undisputed facts of this case are that the petitioner has been continuously and chronically unemployed for the past several years despite whatever has been the level of her participation in Reach Up and the fact that for the past year and a half she has devoted considerable time and energy into volunteering for VITS. Although she has submitted a proposed CSE placement to the Department with VITS, nothing in her proposal sets forth any expectation, much less a timetable, for her work with VITS to become in any way remunerative, much less self-supporting. Although there may be value to her work with VITS, both to her and to the community, it cannot be concluded that the Department is violating the goals of Reach Up by refusing to, in effect, subsidize the continuation of this volunteer work through the payment of ANFC benefits, to the exclusion of requiring the petitioner to make diligent efforts to secure other forms of employment. The petitioner has not produced the kind of expert vocational testimony that would be necessary to show that another CSE placement and continuing participation in Reach Up would be counter-productive to "provide for the development or enhancement of (her) work readiness" and to

"increasing (her) ability to obtain and maintain unsubsidized employment."<sup>3</sup>

According to the regulations the Department may place the petitioner in any CSE that meets health and safety standards, does not illegally discriminate, and does not displace unsubsidized workers. W.A.M. ' 2346.93. Once the Department develops such a placement the petitioner is bound under W.A.M. ' ' 2346.94(4) and 2346.95 to cooperate in this and other Reach Up activities unless she can demonstrate that the placement is not suitable according to W.A.M. ' ' 2346.94(1-3). It cannot be concluded in advance that the Department will be unable to develop a CSE placement for the petitioner that would meet the requirements of the regulations.

Despite the petitioner's past work with VITS, which appears to be substantial and meaningful, it cannot be concluded that the Department is bound by the regulations to place the petitioner in what she insists be a self-directed and self-monitored CSE placement. This is not to say that the petitioner cannot continue her activities with VITS, only that she cannot use her work with VITS as a basis for an exemption from any and all the activities reasonably imposed on her by the Department according to the Reach Up regulations. Similarly, nothing in the regulations requires

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<sup>3</sup>See W.A.M. ' 2346.9(B)(1).

(or even allows) the Department to require less of her by way of Reach Up activities than other participants because of her age (assuming there are no health problems), education, and work experience. As noted above, the primary purpose of Reach Up is to achieve self-sufficiency, not to maximize job satisfaction and future earnings potential.

For all the above reasons, the Department's decision must be affirmed.<sup>4</sup>

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<sup>4</sup>In her written arguments the petitioner also attacks the legal sufficiency of the notices she received from the Department in this matter. However, any inadequate notice to the petitioner was more than "cured" by the meetings between the parties held with the hearing officer and the Department in May and June, 1998, the agreement of issues that was arrived at as a result of those meetings, the extension of time in which the petitioner has been allowed to present her arguments in this matter, and the continuation of her ANFC benefits throughout the pendency of these proceedings.